

Application No. 10/602,896
After Final Office Action of May 9, 2006

6

Docket No.: 58756(47904)

RECEIVED
CENTRAL FAX CENTER

REMARKS

OCT 06 2006

Applicants respectfully request reconsideration of the above-referenced application in light of the amendments above and remarks that follow.

Claims 1-25, all the claims under consideration, were rejected in the Office Action as being anticipated by Boyden. Applicants have cancelled claims 2 and 20 without prejudice and amended claims 1, 3 and 19.

The primary difference between the claimed invention and the prior art is the side of the sales transaction which is facilitated by the system being described and claimed. The claimed invention facilitates the vehicle seller consigning a vehicle for sale at an auction with an automatically determined floor price. The prior art facilitates the buyer buying a vehicle by allowing him to participate in virtual auctions as well as to make sure that the nomenclature is in conformity with industry norms and providing resources such as black book value to make sure that the information presented by the seller is accurate.

Applicants' invention is directed to the consignment of vehicles to one of a plurality of auctions; each auction having a different location and time. In other words, they are off line auctions at a variety of geographical locations. As a result, in the claimed method, auction data for the plurality of auctions is downloaded from a third party database and that data is stored to be used for consignment by sellers. A potential seller wishing to sell a vehicle at one of a plurality of auctions is provided access to the auction data at the website. The seller then notifies the one auction, at the website, of the vehicles consigned to the one auction.

Applicants note that the Office Action now relies on Berent as the primary reference. However, Berent suffers from the same disadvantages as Boyden as discussed in the previous Office Action. In the Office Action, figure 1 and column 6 are relied upon to teach the claimed invention of claim 1. However, at column 6, the teaching is for a potential buyer to view a calendar of events to buy product. Column 6, line 28, clearly teaches that the sale calendar includes the inventory to be sold at the auction with brief descriptions of the vehicles. The user has the option of selecting

certain types of motor vehicle auction sales as well as the time of sale and number of vehicles to be sold by the auction (not the seller). There is no teaching of consigning vehicles to the identified sales using the schedule. However, column 8, which describes the stock locator, further highlights that this is in fact a buyer-initiated operation much like Boyden, not a seller-initiated operation as claimed. The sale calendar and the use of the stock locator help the buyer identify the location of specific vehicles for purchase. This is not the claimed invention, which is a seller-driven methodology and a server as in claim 19 for enabling a seller to consign vehicles to be purchased utilizing a methodology and system such as that in Berent.

Even the Dealer Direct teaching is no different than in Boyden. The owner of the inventory of cars wishes to sell directly to the dealer. The owner of the car inventory creates an auction by listing vehicles for sale for a predetermined period of time. (Column 11, lines 39-50). A minimum sales price is established by the seller of the vehicle. There is no teaching of the server itself determining the adjusted floor price, at least in part, as presently claimed. There is nothing in the Dealer Direct description that in any way teaches consignment of a vehicle to one of a plurality of auctions. The auction sale merely references a methodology for someone to begin the eBay-like process. Accordingly, nothing in Berent teaches the claimed supply side of consignment mechanics of the claimed invention.

Nothing in Boyden overcomes the shortcomings. Although Boyden does provide accessing a system server utilizing a web site, it also describes only the seller side, not the consignment or pricing for vehicles for auction at one of a plurality of auctions.

Neither Boyden nor Berent teach the automatic setting of price. Although both systems teach inputting information about the vehicle, this is merely descriptive information in a common nomenclature for the benefit of the buyer. Nothing in paragraphs 31-34 in Boyden which teaches inputting information, discusses the server utilizing that information to set a price. As emphasized in paragraph 38, it is merely a means for encouraging the seller to input accurate and sufficient data for an informed

decision by the buyer, including having the buyer validate the data by providing pricing information from a plurality of sources; see paragraph 38, last line.

In the Boyden system, the buyer initiates activity by making an offer. He creates the auction. The buyer can validate the data by consulting on line sources.

The claimed system is designed to place merchandise for a selected auction and set the sales price. It is for consigning vehicles. In contrast, Boyden and Berent are for allowing buyers to bid electronically and confirm information about the vehicle. The invention is supply side while the prior art is demand side. Although both the buyer and the seller access the website, there is no need to notify the one auction of a plurality of auctions as claimed because the very act of loading the offer for sale in Boyden creates the auction. The act of participating in a scheduled auction on line is the process in Berent. Neither system notifies the buyer. The buyer enters the website to determine which vehicles are for sale and which auctions are currently ongoing. There is no need to notify the auction. Much like the eBay model, the buyer seeks out individual goods and determines whether or not it wants to place a bid. There is no schedule of a plurality of auctions nor does a seller need to download auction data from a third party database. Under the Boyden model, where offers are released over the Internet more as an offer for sale to others on the website, for a predetermined time period (See Fig. 3B, showing auction time remaining), Figure 2J is not released to any "auction." Even if combined, Berent and Boyden do not teach the claimed seller side consignment and pricing method.

In light of the above, Applicants respectfully submit that claim 1 is vastly different, directed to a different solution to a different problem and a different approach than either Boyden or Berent. For these reasons, Applicants respectfully request the withdrawal of the rejection of claim 1 under 35 U.S.C. §102.

Claims 3-18 depend from claim 1, either directly or indirectly, and define the invention with greater particularity. They also further highlight the differences in approach, and methodology steps between the claimed invention and the Boyden reference. By way of example, claim 3 further defines the step of inputting vehicle

information and letting the system server determine an adjusted floor price for the vehicle based upon the vehicle information. This adjusted floor price is either adjusted as taught in the specification and further claimed in claim 3 or as determined by the server. This occurs on the seller's side as it is the price setting mechanism for the vehicle prior to consignment. There is no such server price adjustment in either reference.

The Office Action in rejecting claim 3, relies upon Boyden, Figures 2A-D and the description of paragraphs 31-34 and 38. However, this is mixing both pre and post use of vehicle identification information in an attempt to arrive at the claimed invention which utilizes the vehicle identification information prior to consignment. The Examiner's reliance on Figures 2A and 2D for teaching utilization of the VIN together with vehicle information and then adjust the floor price reads into the reference more than is there. Figure 2A as taught in paragraphs 30-31 merely uses the VIN as a shorthand ID number for searching for specific vehicles based on certain criteria. There is no teaching of utilizing the VIN to gather vehicle information. The VIN is merely used to search for particular vehicles already stored in the database. "The input field 205 and a button 206 to search for vehicles in the list 201 by the Vehicle Identification Number ("VIN")" – paragraph 30. There is no teaching of the use of the VIN for any other purpose in this paragraph or in paragraphs 31-34. Paragraphs 31-34 are directed to modifying data regarding a specific vehicle to make sure the description of the vehicle is accurate and uniform. However, there is no discussion of utilizing any of this data by the server to adjust the floor price. The interpretation of the prior art in the Office Action is pure hindsight invention given Applicants' teaching.

Claim 9 specifically highlights the difference between the claimed invention and the prior art. The Office Action relies on the fact that shipping instructions to the ultimate buyer are provided by Boyden. However, that is not the invention as claimed in claim 9. Claim 9 defines the step of notifying a transportation facility for transporting the consigned vehicle to the auction. There is no such consignment or transportation in Boyden because the electronic auction is a virtual auction. The only involvement at the

website in the claimed invention is that the receipt of the submission of consignment of the vehicle at the website triggers the report to the transportation facility.

Claim 11 depends from claim 9 and further defines that the auction itself provides auction results to the server and provides access to the auction results to the seller at the website.

Lastly, again exemplary of a common theme of the differences, claim 12 defines that the server calculates the minimum value utilizing Black Book data. In rejecting the claim, the Office Action relies on paragraph 38 for the proposition that Boyden teaches the claimed invention. However, paragraph 38 is silent as to any discussion of calculating pricing. Paragraph 38 is directed to forcing seller to be honest. Although paragraph 38 teaches that the system involves "validating the data entered by the seller, establishing a standardized nomenclature for the data, and providing pricing from different valuation services", it does not teach establishing the price. As stated earlier, paragraph 38 is to "lead the seller to input accurate and sufficient data." Providing pricing from different valuation services is not to calculate a new adjusted floor price, but rather to provide information to seller and buyer to validate the accuracy of the seller's data. Again, the Office Action reads methodology into the teaching of Boyden which just isn't there. This is hindsight invention.

Accordingly, Applicants respectfully submit that claims 2-18 are allowable as defining patentable combinations in their own right as well as depending from allowable claim 1. Applicants respectfully request the withdrawal of the rejection of claims 3-18.

As recognized by the Office Action, claims 19 and 21-25 are defined as a system for substantially carrying out the method of claim 1. However, claims 19 and 21-25, as system claims, further define the difference between an off line auction as claimed and an electronic auction such as Boyden. Again, the system for the resale of vehicles at auction includes a server, the server downloading auction data for a plurality of auctions from a third party database.

For the virtual electronic auctions of Boyden and Berent, there is no need for the seller to download a schedule of auctions because the seller creates the auction merely by putting the information on line. The schedule of auctions in Berent is for the buyer to go shopping, not for the seller to select auctions for consignment. Furthermore, claim 19 requires at least one auction computer corresponding to a respective one of said auctions on the schedule of auctions. The system server notifies the auction computer that a vehicle is to be consigned to the respective auction. There is no plurality of auction computers in Boyden, nor as discussed above is there a need to notify any auction because the very act of submitting the data about a vehicle in Boyden starts the electronic auction process. In Berent, for the Dealer Direct portion – notifying the dealer of the vehicle time period starts the Berent's auction: auctions schedule is for the benefit of buyer, not seller. This is very different from the off line auction process in which there is at least one of a plurality of auction computers corresponding to a respective auction. Accordingly, Applicants submit that claim 19 is not anticipated and respectfully requests the withdrawal of the rejection of claim 19 under 35 U.S.C. §103.

Claims 21-25 depend from claim 19 and define the invention with greater particularity. By way of example, claim 23 defines a third party database and said third party database communicating with said server to obtain a schedule of auctions. There is no such need for the server to obtain a schedule of auctions for consignment in Boyden and Berent for all the reasons discussed above; the schedule is irrelevant to the seller in the prior art system.

Claim 24 defines the server communicating with a third party database to obtain vehicle information for determining the adjusted floor price for the seller.

Lastly, claim 25 again defines a structure, including a transportation computer so that the server can cause transportation of the vehicle to the auction. There is no need or even ability to transport a vehicle to the virtual auction of Boyden or Berent. Accordingly, Applicants submit that claims 21-25 are allowable as defining patentable combinations in their own right, as well as depending from allowable claim 19.

OCT. 6. 2006 11:12AM EAPD LLP

RECEIVED
CENTRAL FAX CENTER

NO. 759 P. 19

OCT 06 2006

Application No. 10/602,896
After Final Office Action of May 9, 2006

12

Docket No.: 58756(47904)

Applicants respectfully request the withdrawal of the rejection of claims 19 and 21-25 under 35 U.S.C. § 103.

Applicants submit that no new arguments have been made and no new limitations have been added. Because Berent is really duplicative of Boyden, there was no need. Therefore, Applicants submit that there is no need for further search or to consider any new issues raised. Applicants submit that they have placed the application in condition for allowance or in better condition for appeal. If the Examiner is unable to issue an immediate Notice of Allowance, the Examiner is respectfully requested to telephone the undersigned attorney with a view towards discussing the outstanding issues.

Dated: October 6, 2006

Respectfully submitted,

By Howard M. Gitten

Howard M. Gitten
Registration No.: 32,138
EDWARDS ANGELL PALMER & DODGE
LLP
350 East Las Olas Boulevard
Fort Lauderdale, Florida 33301
(954) 667-6130
Attorneys/Agents For Applicants